

Federal Trade Commission

§ 803.5

§ 803.3 Statement of reasons for non-compliance.

A complete response shall be supplied to each item on the Notification and Report Form and to any request for additional information pursuant to section 7A(e) and § 803.20. Whenever the person filing notification is unable to supply a complete response, that person shall provide, for each item for which less than a complete response has been supplied, a statement of reasons for noncompliance. The statement of reasons for noncompliance shall contain all information upon which a person relies in explanation of its noncompliance and shall include at least the following:

(a) Why the person is unable to supply a complete response;

(b) What information, and what specific documents or categories of documents, would have been required for a complete response;

(c) Who, if anyone, has the required information, and specific documents or categories of documents; and a description of all efforts made to obtain such information and documents, including the names of persons who searched for required information and documents, and where the search was conducted. If no such efforts were made, provide an explanation of the reasons why, and a description of all efforts necessary to obtain required information and documents;

(d) Where noncompliance is based on a claim of privilege, a statement of the claim of privilege and all facts relied on in support thereof, including the identity of each document, its author, the author's title/position, addressee, the addressee's title/position, date, subject matter, all recipients of the original and of any copies, the recipients' titles/positions, the document's present location, and who has control of it.

[48 FR 34439, July 29, 1983, as amended at 81 FR 60259, Sept. 1, 2016]

§ 803.4 Foreign persons refusing to file notification.

(a) In an acquisition to which § 801.30 does not apply, and in which no assets (other than investment assets) located in the United States and no voting securities of a United States issuer will be acquired directly or indirectly, if a

foreign acquired person refuses to file notification, then any other person which is a party to the acquisition may file notification on behalf of the foreign person. Such notification shall constitute the notification required of the foreign person by the act and these rules.

(b) Any person filing on behalf of the foreign person pursuant to this section must state in the affidavit required by § 803.5(b) that such foreign person has refused to file notification and must explain all efforts made by the person filing on behalf of the foreign person to obtain compliance with the act and these rules by such foreign person.

(c) Any notification filed on behalf of a foreign person pursuant to this section must contain all information and documentary material reasonably available to the person filing on behalf of the foreign person which such foreign person would be required to provide. Whenever information or documentary material is not reasonably available, the person filing on behalf of the foreign person shall so indicate on the Notification and Report Form, and need not supply the statement of reasons for noncompliance required by § 803.3.

(d) Any foreign person on whose behalf notification has been filed by another person pursuant to this section shall be a "person filing notification" for purposes of the act and these rules. Nothing in this section shall exempt a foreign person from the requirements of the act or these rules with respect to a request for additional information or an extension of the waiting period pursuant to section 7A(e) and these rules.

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, or with the DVD submission, attesting that the issuer whose voting securities are to be acquired has received notice in writing by certified or registered mail, by wire or by hand delivery, at its principal executive offices, of:

(i) The identity of the acquiring person;